

Message Text

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FM AMEMBASSY OTTAWA
TO SECSTATE WASHDC 7478

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E.O. 11652: N/A
TAGS: EFIS, CA
SUBJECT: FOREIGN INVESTMENT IN CANADA'S FISHERY

REF: STATE 84700

1. EMBASSY RECEIVED FOLLOWING LETTER MAY 19 FROM C.R. MOLSON, SENIOR POLICY ADVISOR, INDUSTRIAL POLICY GROUP, DEPARTMENT OF FISHERIES AND ENVIRONMENT, IN RESPONSE TO QUESTIONS IN REFTEL REGARDING FOREIGN INVESTMENT IN CANADA'S FISHERY:

2. BEGIN TEXT: "THIS IS FURTHER TO YOUR ENQUIRY OF APRIL 5 CONCERNING CANADA'S LAWS AND REGULATIONS RESPECTING FOREIGN OWNERSHIP IN THE FISHING INDUSTRY. TO FULLY UNDERSTAND THE APPROACH TAKEN IN CANADA TOWARDS THIS SUBJECT AND HOW THE SYSTEM FUNCTIONS REQUIRES MORE THAN SHORT SPECIFIC ANSWERS TO THE QUESTIONS YOU HAVE LISTED. THEREFORE, I WILL TRY AND PROVIDE IN THE FOLLOWING PARAGRAPHS AN ACCOUNT OF WHAT WE DO, HOW WE DO IT AND THE TOOLS EMPLOYED AND TO SLANT THE DESCRIPTION SO THAT ANSWERS TO YOUR QUESTIONS WILL FALL OUT ALONG THE WAY.

3. "FIRST OF ALL THE TOOLS. THESE ARE THE FISHERIES ACT
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ADMINISTERED BY THE FISHERIES AND MARINE SERVICE OF THE DEPARTMENT OF FISHERIES AND ENVIRONMENT AND THE FOREIGN INVESTMENT REVIEW ACT ADMINISTERED BY THE FOREIGN INVESTMENT REVIEW AGENCY FOR WHICH THE MINISTER OF INDUSTRY, TRADE AND COMMERCE REPORTS TO PARLIAMENT. I WILL RETURN TO THE FOREIGN INVESTMENT REVIEW ACT LATER.

4. "UNDER THE FISHERIES ACT, THE MINISTER OF FISHERIES HAS 'ABSOLUTE DISCRETION' TO ISSUE LEASES OR LICENSES FOR FISHERIES OR FISHING. WHILE OWNERSHIP IS NOT SPECIFIED AS A LIMITATION THE 'ABSOLUTE DISCRETION' IS INTERPRETED AS INCLUDING (FOREIGN) OWNERSHIP FOR PURPOSES OF ISSUING LICENCES. HOWEVER, THIS AUTHORITY EXTENDS ONLY TO THE ISSUANCE OF FISHING LICENCES; IT DOES NOT INCLUDE FISH PROCESSING OR TRANSPORT OF FISH.

5. "IN ISSUING FISHING LICENCES UNDER THE FISHERIES ACT OUR POLICY IS NOT TO ISSUE ANY NEW LICENCES TO FIRMS REGISTERED IN CANADA HAVING ANY ELEMENT OF FOREIGN OWNERSHIP. THOSE FIRMS WHICH ALREADY HAD CANADIAN FISHING LICENCES IN 1974 WHEN THIS POLICY WAS ADOPTED AND DISCUSSED WITH THOSE CONCERNED IN THE INDUSTRY, CAN RETAIN THESE LICENCES SUBJECT TO THE SAME CONDITIONS THAT APPLY TO CANADIANS. THIS APPLIES TO ALL LICENCES ISSUED TO FISH SPECIES WITHIN THE 200-MILE ZONE (AND UNDER CANADIAN FISHERIES MANAGEMENT). IT DOES NOT APPLY TO LICENSES ISSUED TO FOREIGN FLAG VESSELS WHO ARE FISHING THE QUOTAS ALLOCATED TO THEM WITHIN THE CANADIAN ZONE.

6. "IF A CANADIAN OWNED COMPANY HAVING FISHING LICENCES IS PURCHASED BY A FOREIGN OWNED FIRM OR IF A FOREIGN OWNED FIRM HAVING A SUBSIDIARY IN CANADA WHICH OWNS LICENCES IS TAKEN OVER BY ANOTHER FOREIGN OWNED FIRM, THE

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LICENCES CANNOT BE TRANSFERRED TO THE NEW OWNER EXCEPT IN CASES WHERE THE LICENCES RELATE TO FISH RESOURCES OTHER THAN THOSE MANAGED BY CANADA.

7. "THIS POLICY IS CLOSELY RELATED TO THE EXTENSION OF OUR FISHERIES JURISDICTION OUT TO 200 MILES AND THE OBJECTIVE OF OUR RESOURCE MANAGEMENT POLICY WITHIN THAT ZONE WHICH IS RECOVERY OF FISH POPULATIONS AND INCREASED CANADIAN HARVESTING. AS RESOURCE RECOVERY IS ACHIEVED WE ANTICIPATE THAT CANADIAN ENTERPRISE CAPITAL WILL BE ABLE TO REAP THE SUBSTANTIAL BENEFITS THAT WILL ACCRUE FROM THESE POLICIES.

8. "THE RATIONALE FOR THIS LICENSING POLICY IS THAT FISH ARE NATURAL RESOURCES WHICH BELONG TO CANADA AND, THEREFORE, CANADIANS SHOULD HAVE THE OPPORTUNITY OF HARVESTING THEM. FURTHERMORE, SINCE IT IS THE CANADIAN TAXPAYERS WHO ARE PAYING THE SUBSTANTIAL COSTS INVOLVED IN THE MANAGEMENT, SURVEILLANCE, ETC. OF THESE RESOURCES WE FEEL THAT CANADIANS SHOULD RECEIVE THE BENEFITS OF THESE RESOURCES. FINALLY, OUR RESOURCE MANAGEMENT POLICIES HAVE NECESSARILY REDUCED FOR THE TIME BEING BOTH THE

FOREIGN AND THE CANADIAN CATCH WITHIN THE 200-MILE ZONE IN ORDER TO ACHIEVE RESOURCE RECOVERY. OUR POLICY IS TO PERMIT FOREIGN NATIONS TO CONTINUE FISHING, WITHIN OVERALL QUOTA LIMITATIONS, STOCKS WHICH ARE SURPLUS TO CANADA'S CATCHING CAPABILITIES. HOWEVER, WE ALSO ANTICIPATE THAT THE REACTION OF FOREIGN NATIONS, IN ORDER TO RETAIN FISH SUPPLIES, WILL LIKELY INCLUDE ATTEMPTS TO BUY INTO THE CANADIAN INDUSTRY. OUR LICENSING POLICY IS DESIGNED TO PREVENT THIS OR AT LEAST TO MANAGE IT SO AS TO ACHIEVE THE MAXIMUM SOCIAL AND ECONOMIC BENEFIT FOR CANADA.

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9. "THIS BRINGS UP THE ISSUE OF JOINT FISHING UNDER-TAKINGS BETWEEN A CANADIAN COMPANY AND A FOREIGN PARTNER. THESE FALL INTO TWO CATEGORIES: 1) THOSE IN WHICH A FOREIGN FIRM TAKES AN EQUITY POSITION OR MAKES AN INDIRECT INVESTMENT IN A CANADIAN FIRM; AND 2) THOSE INVOLVING CO-OPERATIVE FISHING ARRANGEMENTS IN WHICH A FOREIGN VESSEL IS CHARTERED FOR A SHORT PERIOD BY A CANADIAN COMPANY TO ACHIEVE A SPECIFIC OBJECTIVE SUCH AS TECHNOLOGY TRANSFER OR EXPLOITATION OF UNUTILIZED OR UNDER-UTILIZED SPECIES.

10. "IN THE FIRST CASE, PRESENT OVER-CAPACITY IN PROCESSING PLANTS AND A FLEET ADEQUATE IN RELATION TO RESOURCES AND QUOTA ALLOCATIONS WOULD SEEM TO PRECLUDE IN GENERAL THE NEED FOR FOREIGN CAPITAL IN THE COASTAL AND OFFSHORE FISHERIES AT THE PRESENT TIME. FURTHERMORE, IN A SITUATION WHERE THE CANADIAN FISHING INDUSTRY WILL CONTINUE TO UNDERGO FUNDAMENTAL CHANGE IN ADJUSTING TO A NEW MANAGEMENT REGIME WE FEEL THAT AN INFLUX OF FOREIGN CAPITAL INVESTMENT COULD SERIOUSLY COMPROMISE OUR REHABIL-

ITATION POLICIES. ON THE OTHER HAND, WE RECOGNIZE THAT SOMETIME IN THE FUTURE SUCH JOINT VENTURES MIGHT CONTAIN ELEMENTS THAT WOULD BE OF ADVANTAGE TO CANADA. THEREFORE, WE HAVE NOT CLOSED THE DOOR COMPLETELY TO THIS TYPE OF ARRANGEMENT. WE ARE, HOWEVER, EXAMINING ALL DEVELOPMENTS

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AND PROPOSALS VERY CAREFULLY AND THIS IS WHERE THE FOREIGN INVESTMENT REVIEW ACT ENTERS THE PICTURE. I DISCUSS THIS AT GREATER LENGTH LATER.

11. "IN THE SECOND CASE, COOPERATIVE FISHING ARRANGEMENTS, WHICH DO NOT INVOLVE CAPITAL INVESTMENT, WE HAVE ALLOWED A NUMBER OF THESE TO PROCEED ON AN EXPERIMENTAL BASIS AND FOR A SHORT TERM (ONE YEAR OR LESS) ONLY. HOWEVER, APPLICATION MUST BE MADE BY A CANADIAN FIRM AND FULL DETAILS OF EACH PROPOSAL MUST BE PROVIDED. IN ALL CASES THE VESSELS INVOLVED ARE FOREIGN OWNED AND CREWED ALTHOUGH CANADIANS ACCOMPANY THEM ON BOARD AS OBSERVERS. WITH THIS TYPE OF ARRANGEMENT WE CAN, WHILE PROTECTING THE INTERESTS OF CANADIAN FISHERMEN LEARN SOMETHING WHICH COULD BE OF VALUE IN FORMULATING OUR REHABILITATION AND DEVELOPMENT POLICIES WITHOUT INCURRING THE MORE PERMANENT FEATURES WHICH DIRECT INVESTMENT IMPLIES. IN SHORT, THESE ARRANGEMENTS ARE SEEN AS BRIDGING DEVICES WHILE WE DEVELOP THE OPTIMAL EXPLOITATION PATTERN FOR CANADA.

12. "WHILE THE LICENSING POLICY AS IMPLEMENTED UNDER THE AUTHORITY OF THE FISHERIES ACT PROVIDES ADEQUATE CONTROL OVER THE RESOURCES AND ENABLES THEM TO BE MANAGED IN THE INTERESTS OF CANADA, IT DOES NOT APPLY TO THE OWNERSHIP OF PROCESSING FACILITIES. ECONOMIC NECESSITY DICTATES THAT THE LARGER PLANTS MUST HAVE A YEAR-ROUND SUPPLY OF FISH AND A CERTAIN DEGREE OF SPECIES MIX AS WELL. TO GET THIS THEY MUST HAVE LARGE BOATS CAPABLE OF YEAR-ROUND OPERATION AND, THEREFORE, OUR LICENSING POLICY DOES HAVE SOME EFFECT ON THE LARGER PLANTS. HOWEVER, MOST OF THE PROCESSING PLANTS ARE RELATIVELY SMALL SEASONAL OPERATIONS DEPENDENT UPON THE INSHORE SMALL BOAT FISHERY FOR THE SUPPLY OF RAW MATERIAL. THESE BOATS ARE OWNED BY INDEPENDENT FISHERMEN.

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THE TOTAL PRODUCTION OF THE SMALL PLANTS IS SUBSTANTIAL AND THEY ARE A SIGNIFICANT ELEMENT IN OUR REHABILITATION PROGRAM. THEREFORE, WE MUST BE CONCERNED ABOUT FOREIGN OWNERSHIP IN BOTH LARGE AND SMALL PROCESSING OPERATIONS.

TO OUTLINE OUR SYSTEM AS IT APPLIES TO FISH PROCESSING, TRANSPORTATION, SHIPBUILDING, AND OTHER ASSOCIATED ACTIVITIES I WILL NOW REFER TO THE FOREIGN INVESTMENT REVIEW ACT.

13. "THIS ACT APPLIES TO ALL BUSINESS IN CANADA EXCEPT A FEW SUCH AS BANKING TO WHICH SPECIFIC LEGISLATION ALREADY APPLIES. IT PROVIDES THE GOVERNOR-IN-COUNCIL AUTHORITY TO DISALLOW ANY TAKEOVER OF A CANADIAN BUSINESS OR ESTABLISHMENT OF A NEW BUSINESS BY ANY FOREIGN FIRM IF THE TRANSACTION IS NOT JUDGED TO BE OF SIGNIFICANT BENEFIT TO CANADA. MOST PROPOSALS BY FOREIGN FIRMS TO INVEST IN CANADA WHETHER BY TAKING OVER A CANADIAN FIRM OR BY STARTING UP A NEW BUSINESS MUST BE REPORTED TO AND APPROVED BY THE FOREIGN INVESTMENT REVIEW AGENCY. THERE ARE A FEW EXCEPTIONS TO THIS SUCH AS EXPANDING A BUSINESS ALREADY BEING CARRIED ON OR TAKING OVER A BUSINESS OWNED BY A PROVINCE, BUT I WILL NOT GO INTO SUCH DETAILS HERE - YOU SHOULD OBTAIN THEM FROM THE AGENCY. EACH PROPOSAL FROM A NON-ELIGIBLE PERSON OR FIRM IS REVIEWED AND ASSESSED BY THE AGENCY AND THE AGENCY'S RECOMMENDATIONS ARE SUBMITTED TO CABINET FOR DECISION. IN THIS PROCESS, AGENCY OFFICIALS INTERVIEW APPLICANTS TO FULLY DISCUSS THEIR PROPOSALS AND, IF POSSIBLE, OBTAIN UNDERTAKINGS THAT IMPROVE THE BENEFITS TO CANADA.

14. "IN FISHERIES RELATED CASES THE AGENCY OBTAINS FROM THIS DEPARTMENT ADVICE ON WHETHER OR NOT EACH PROPOSED TRANSACTION WILL BENEFIT THE CANADIAN FISHING INDUSTRY,

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FISHERMEN, PLANT WORKERS, EXPORTS AND SO ON. THE DEPART-

MENT ALSO INFORMS THE AGENCY ON THE COMPATIBILITY OF THE PROPOSED TRANSACTION WITH NATIONAL FISHERIES POLICY. EACH PROPOSAL IS, THEREFORE, CAREFULLY REVIEWED BY THIS DEPARTMENT BOTH AT THE HEADQUARTERS AND IN THE REGION CONCERNED. IF WE FIND THE PROPOSAL WOULD BENEFIT CANADA BY UTILIZING A NEW SPECIES, INTRODUCING NEW TECHNOLOGY, OPENING UP NEW MARKETS, ETC. WE WOULD LIKELY RECOMMEND IN FAVOUR OF IT. IF, HOWEVER, OVER-CAPACITY ALREADY EXISTED IN THE REGION CONCERNED, THE LOCATION CHOSEN REQUIRED EXTENSIVE PUBLIC INFRASTRUCTURE INVESTMENT (HARBOUR, WATER, SUPPLY, ETC.), THE PROJECT WAS NOT COMPATIBLE WITH OUR MANAGEMENT OR REHABILITATION POLICIES, WE WOULD RECOMMEND THE PROJECT BE REJECTED. THE AGENCY IS NOT BOUND TO ACCEPT ANY OR ALL THE ADVICE IT RECEIVES IN THIS WAY, INCLUDING THAT FROM THE PROVINCIAL GOVERNMENTS. HOWEVER, IN CASES WHERE CONFLICTING OPINIONS ARISE IT WILL USUALLY TRY TO RESOLVE THESE THROUGH GREATER DISSEMINATION OF INFORMATION AND CONSULTATION IN ORDER TO REACH A CONSENSUS. IF FISHING LICENCES ARE INVOLVED AND OUR LICENSING POLICY PRECLUDES THE ACQUISITION OF LICENCES THE AGENCY IS SO INFORMED AND THE PROPOSAL IS EITHER WITHDRAWN OR RESUBMITTED IN A FORM THAT MEETS OUR REQUIREMENTS.

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15. "THIS SUMMARIZES THE MAIN ELEMENTS IN OUR CURRENT ACTS, REGULATIONS AND IMPLEMENTATION POLICY AND METHODS RESPECTING FOREIGN OWNERSHIP. THE SHORT ANSWERS TO YOUR QUESTIONS 2(A),(B) AND (C) ARE, THEREFORE, YES. WITH RESPECT TO QUESTION 2 (D) THE ANSWER IS A QUALIFIED NO. IN THE CASE OF VESSEL LICENSING, AS ALREADY INDICATED, FOREIGN OWNED FIRMS WHICH HAD FISHING LICENCES WHEN THE POLICY WAS ANNOUNCED MAY RETAIN THOSE LICENSES BUT THEY CANNOT HAVE ANY MORE. AT THE MOMENT, BECAUSE OF RESOURCE LIMITATIONS, ALL GROUND FISH LICENCES, REGARDLESS OF OWNERSHIP, ARE FROZEN SO THAT IN PRACTICE THIS WILL ONLY BECOME EFFECTIVE WHEN RESOURCES HAVE RECOVERED SUFFICIENTLY TO ENABLE THE MINISTER TO ISSUE MORE LICENCES. IN THE CASE OF DEVELOPMENT GRANTS TO COMPANIES SUCH AS UNDER THE REGIONAL DEVELOPMENT INCENTIVES ACT THERE IS NO RESTRICTION BECAUSE OF (FOREIGN) OWNERSHIP. HOWEVER, IT CAN PROBABLY BE SAID THAT OTHER THINGS BEING EQUAL, IF TWO FIRMS, ONE CANADIAN AND THE OTHER FOREIGN OWNED, MAKE IDENTICAL APPLICATIONS AND RESOURCES OR OTHER FACTORS INDICATE A FEASIBILITY FOR ONLY ONE, THE CANADIAN OWNED FIRM WOULD BE GIVEN PREFERENCE.

16. "IN CONCLUSION, I WOULD POINT OUT THAT POLICY IS FLEXIBLE WITH TIME AND, AS RESOURCE RECOVERY IS ACHIEVED THIS CAN AND PROBABLY WILL CHANGE, DEPENDING ON THE NEEDS

AND CIRCUMSTANCES. IT IS IMPORTANT TO EMPHASIZE, HOWEVER,
THAT OUR FOREIGN OWNERSHIP POLICY IS AIMED AT ACHIEVING
THE MAXIMUM BENEFIT FOR CANADA FROM OUR NATURAL RESOURCES.
I SHOULD ALSO EMPHASIZE THAT OUR POLICY IS AIMED PRIMAR-
ILY AT NEW INVESTMENT. WE ARE VERY ANXIOUS THAT THOSE
ALREADY HERE ARE TREATED FAIRLY AND THAT OUR POLICIES HAVE
THE LEAST POSSIBLE DETRIMENTAL EFFECT ON THEIR CONTINUING
OPERATIONS." END TEXT. ENDERS
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